Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978.

No. 78-1188

ROBERT D. SPICKLER, *Petitioner*

V.

GEORGE AND GERTRAUD BRENGELMANN, *Respondent*
AND
THE HONORABLE HARRY P. GLASSMAN,
JUSTICE OF THE SUPERIOR COURT,
STATE OF MAINE . . . . *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE.

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JANUARY 26, 1979.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE.

The Petitioner, Robert D. Spickler, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Judicial Court of the State of Maine entered in this proceeding on November 3, 1978.

OPINION BELOW

The Opinion of the Maine Supreme Judicial Court, BRENGELMANN v. LAND RESOURCES OF NEW ENGLAND AND CANADA, INC. and Robert D. Spickler, Me., 393 A. 2d.174 appears in the Appendix hereto.

JURISDICTION

The Judgment of the Maine Supreme Judicial Court was entered on November 3, 1978, and this petition was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

Question 1. Is it an inalienable right of a party that a judge of any court must self-recuse whether challenged or not if it be known to that judge that for extra-judicial reason it may appear he could be biased for or against a party, even if such bias is only possible unconscious bias?

Question 2. Must a judgment granted to a party on a decided issue in one part of a trial be overturned where the trial judge maliciously abused his discretion against the other party in a separate issue in another part of this same trial?

Subsidiary to Question 2. Must a valid orderly counterclaim strictly related to plaintiff's claim in a jury trial be tried simultaneously with plaintiff's claims unless parties agree to do otherwise?

Question 3. Is incompetence of attorney, properly shown by an orderly motion for relief from judgment under Federal Rules of Civil Procedure 60(b) (6) or under a similar rule in state courts constructive denial of due process of law to incompetent attorney's client in civil, as well as criminal cases?

Question 4. Is a party appearing pro se, having shown the Court that reasonable effort to obtain adequate counsel had failed, entitled to affirmative guidance by the Court in avoiding procedural errors?

CONSTITUTIONAL PROVISIONS

Fifth Amendment, United States Constitution:

> No person . . . shall be deprived of . . . property without due process of law.

Fourteenth Amendment, United States Constitution:

> . . . nor shall any state deprive any person of . . . property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This petition arises out of a civil lawsuit, George Brengelmann and Gertraud Brengelmann v. Land Resources of New England and Canada, Inc. et al, brought in the State of Maine Superior Court (1974), in which Petitioner, Robert D. Spickler, was a party defendant.

Petitioner is self-employed and conducts several small business enterprises; and during the years from 1972 through 1976 Petitioner employed Mrs. Caroline Glassman, an attorney, to represent him or his company from time to time in diverse business matters. (Attorney Caroline Glassman did not represent Spickler in the Brengelmann matter.)

Attorney Caroline Glassman's husband is the Honorable Harry P. Glassman, Justice of the Superior Court of the State of Maine.

Until 1974 or 1975, Attorney Caroline Glassman had her offices in her home at 56 Thomas Street, Portland, Maine. On occasion, when Petitioner called Mrs. Glassman on her office phone the phone was answered by her husband, Judge Glassman, who always answered by saying, "Law Office, Caroline Glassman". Judge Glassman would then take a brief message from Petitioner for his wife. A tape recording of Judge Glassman answering the phone was offered in evidence and was always available to the Court below.

Mrs. Patricia Malia, Assistant Clerk of the Superior Court of Cumberland County, whose specific duties were to attend to the judicial schedule of Judge Glassman, testified in the record in the Court below that in 1974 or 1975, Judge Glassman told her he knew (Petitioner) Spickler immediately by the mention of his name. The Judge told Mrs. Malia that his wife worked for Spickler and that it

would be inappropriate for him to act as judge in any matter concerning Spickler even if his wife were not representing Spickler in that matter.

Late in December, 1975, Petitioner discharged Mrs. Glassman from a multi-defendant civil lawsuit because of dissatisfaction with the way she was handling Petitioner's interest in that particular lawsuit, wherein Petitioner was a defendant. The legal fees of Petitioner in that lawsuit were forecast by Mrs. Glassman to amount ultimately to twenty thousand dollars, four thousand dollars having already been paid to her.

On January 5th, 1976, a new lawyer was employed and entered his appearance on behalf of Petitioner. Mrs. Glassman's law firm withdrew on January 9th, 1976.

Six days later, on January 15th, 1976, the Brengelmann lawsuit (which precipitated this petition) came up for trial in the state of Maine, Cumberland County Superior Court, the Honorable Harry P. Glassman, presiding.

On the morning of the trial, Petitioner met his attorney, James Athanus of Bruswick, Maine, in the hall of the court house and learned that Justice Glassman was to preside in the case. Attorney Athanus had already been in chambers with the Justice and opposing counsel. Petitioner instructed Attorney Athanus to inform Justice Glassman that his client was "the" Robert D. Spickler who the Justice knew had frequently employed his wife, Attorney Caroline Glassman, and that the Justice is requested to disqualify himself. Mr. Athanus seemed very nervous and appeared reluctant to present Petitioner's objection to Justice Glassman presiding at the trial. Petitioner then tried to explain further the reason for wanting the disqualification, but his attorney ended the discussion

abruptly and said that Judge Glassman was waiting for him to return to his chambers, and without further discussion left Petitioner sitting in the hall outside of the judge's offices. (See affidavit of Charles B. Rodway, Esq., then the Clerk of the State of Maine Supreme Judicial Court. (See App. Pg. 14 .)

Attorney Athanus returned from Judge Glassman's chambers and reported to Petitioner that Judge Glassman said that his wife doesn't work for Spickler anymore (affidavits of Athanus and Spickler in record), and refused to step down, therefore Attorney Athanus advised that there was no choice but to go ahead with the trial and "we must try not to irritate the judge any further". Petitioner advised Attorney Athanus that he would participate in the trial because Attorney Athanus stated there was no choice in the matter, but he nevertheless instructed Attorney Athanus to declare to the Court that Petitioner was doing so under protest. (Affidavit of Robert D. Spickler in record.)

The jury trial went forward and resulted in a verdict in favor of the Brengelmanns. Damages were granted in the amount of twenty-five hundred dollars. After the trial, Spickler complained to Attorney Athanus that he was dissatisfied with Mr. Athanus' performance because Athanus did not introduce Spickler's counterclaim and did not call a key witness, Mr. Bowley, who waited through the trial to be called. (Affidavit of Mr. Bowley in the motion record.) (App. Pg. 15)

A week later, Attorney Athanus apologized to Petitioner, stating he was intimidated, suppressed and frightened by Judge Glassman, that he did not push disqualification because of this fright and also allowed the counterclaim to be thrown out without

pressing for Spickler's rights. Mr. Athanus confessed that he had been incompetent and told Petitioner he would admit his incompetence on appeal and sign an affidavit to that effect. (Tape recording offered in record, supporting affidavit of Spickler.)

Petitioner learned months later from the court reporter's transcript of in-chambers conference that Justice Glassman summarily dismissed Spickler's counterclaim by simply overruling the regular pre-trial order of a previous Superior Court Justice which ordered that the counterclaim be heard at trial before a jury.

Spickler also learned from the reporter's transcript that Justice Glassman made the following untruthful statements:

1. "I have no knowledge of Mr. Spickler . . ."
2. " . . . I have . . . no knowledge of any of my wife's law practice."

[Emphasis supplied]

These statements are impeached by:

1. The affidavit in the record and tape recording of phone conversation between Spickler and Justice Glassman.
2. Motion record of the testimony of Assistant Court Clerk Malia, and the Justice's statement "she [Attorney Glassman] doesn't work for him any more". Affidavits of Attorney Athanus and Petitioner.

After the trial, judgment and award was entered in favor of the Brengelmanns by Glassman, J. on January 19, 1976.

On February 17, 1976, Petitioner Spickler, appearing pro se (knowing it would be futile to try to get a Maine lawyer to attack Justice Glassman), filed a timely appeal to the Maine Supreme Judicial Court. The appeal presented the arguments:

I. THE COURT BELOW ERRED WHEN JUSTICE GLASSMAN DID NOT DISQUALIFY HIMSELF AS TRIAL JUDGE.

II. THE COURT BELOW ERRED IN DISMISSING DEFENDANT'S COUNTERCLAIM.

(On September 2nd, 1977 (twenty-one months after the trial), an order was filed by Justice Glassman dismissing Spickler's counterclaim and granting judgment to Plaintiffs on the counterclaim.)

In support of disqualification (ARGUMENT I), Spickler submitted eighteen pages in the brief, including third party affidavits, and tape recordings[1]

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1 All of these tape recordings have been offered to the Court(s) below and have always been available, beginning with the first appeal to the Maine Supreme Court. Brengelmann v. Land Resources of New England and Canada, Inc. et al, Me., 380 A. 2d (1977). The tapes were offered again during the hearing on the motion for relief from judgment. This motion, being denied precipitated the second appeal to the Maine Supreme Court. Brengelmann v. Land Resources of New England and Canada, Inc. et al, Me., 393 A. 2d. 174 (1978). Denial of this second appeal is the basis of this petition for certiorari. The record of the motion for relief hearing shows that the tapes were pressed for admission into evidence and an offer of proof was asked for and given and the motion Justice said he must rule on admissability but, in fact, he remained silent and did not rule on admissability at all.

In the subsequent appeal, Brengelmann, Me., 393 A. 2d. 174, Acting Chief Justice Pomeroy commented during oral argument that he (Spickler) did everything in his effort to place the tapes in evidence except "[h]it the motion Justice over the head with them".

as evidence to prove mandatory disqualification

The Maine Supreme Judicial Court struck these eighteen pages (all of ARGUMENT I, incorporating the tape recordings), from the appeal ruling that they were not properly before the Court because they were not in the record in the Court below.

Although the Maine Supreme Court granted the appeal of the counterclaim it refused to overturn the award to the Brengelmanns by Justice Glassman. Brengelmann , Me., 380 A 2d (1977).

Spickler, still seeking review concerning the issue of disqualification of Justice Glassman in the trial, returned to the lower Court and filed a motion for relief from judgment under Rule 60(b) (6) M.R.Civ.P. (which rule is identical to the Federal Rule 60(b) (6). This motion was submitted directly to Justice Glassman with all the same affidavits and tape recordings in support of the motion which had been struck by the Maine Supreme Court in Brengelmann, Me., 380 A. 2d, supra.

Justice Glassman, without challenge, recused himself and was replaced (by order of the Maine Supreme Court) by a Justice of the Maine Supreme Judicial Court who acted as motion Justice to hear the motion under Rule 60(b) (6).

(Also, see copy of letter to motion Justice and list of documents in letter. App. Pg. 16.)

Although the written opinion of Brengelmann , Me., 393 A. 2d. (1978) acknowledges that:

> "Spickler argued that the motion Justice denied him opportunity to place in evidence tape recordings . . ."

the Maine Supreme Judicial Court in its opinion (App.Pg.11) is silent as to whether error was committed below by virtue of this denial. In any event the tapes were pressed to be placed in evidence on several occasions over a period of several court

By this motion it was intended that the tapes and affidavits would be placed properly on the record and therefore be preserved in the record for whatever court of review that might be sought.

HOW THE FEDERAL QUESTION WAS PRESENTED

The federal question was correctly raised in accordance with Rule 23-1. (f.) in two separate instances in the Court below.

In the first instance it was raised in the Motion for Relief from Judgment under M.R.Civ.P. Rule 60(b) (6) as shown in that portion of the motion which is reproduced below:

> " . . . Defendant Spickler was denied the due process of law in subject trial as guaranteed by Amendment V of the Constitution of the United States, and more specifically the clause in Amendment V which states, "Nor [shall any person] be deprived of . . . property without due process of law".
>
> Also Defendant Spickler asserts he was denied the due process guarantee of Amendment XIV to the Constitution of the United States in that it is specifically stated therein, "Nor shall any state deprive any person of property without due process of law";
>
> Movant avers herein that those due process rights were abridged by the conflict of interest of the presiding judge who should not have sat in the conduct of the trial.
>
> Wherefore, in preservation of the federal rights of the Defendant framed herein,
>
> Movant states that sufficient reason justifying relief from the operation of the

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appearances. The Court always appears to avoid formally admitting them, somehow.

Judgment of January 19, 1976 has been put before this Court and it is prayed that the Court will, on consideration of all aspects of this Motion, preserve the integrity of our courts by granting this Motion.

Dated at Scarborough, Maine this third day of January, 1978.

(s)_____
Robert D. Spickler
Defendant pro se "

In the second instance the federal question was raised by written brief in the subject appeal of the ruling of the motion Justice to the Maine Supreme Judicial Court (Brengelmann, Me., 393 A. 2d. 174) in ARGUMENT II of the brief on the merits on appeal, which stated:

THE COURT BELOW ERRED IN NOT RECOGNIZING THAT INCOMPETENCE OF ATTORNEY IS GROUNDS FOR A NEW TRIAL.

1. Defendant's attorney, Mr. Athanus, stated that he was frightened by Judge Glassman (Affidavit of Spickler supported by original Electronic Recording). (App.47)
2. Mr. Athanus failed to call key witness Ernest Bowley (Affidavit of Witness Bowley and Affidavit of Defendant Spickler). (App. 52, 47)
3. Mr. Athanus allowed, without comment, the wrongful act of Judge Glassman in dismissing the obviously valid couterclaim. Brengelmann v. Spickler ,Me., 380 A. 2d. 213 (1977)
4. Mr. Athanus did not relay to Judge Glassman Defendant Spickler's demand that he (the Judge) step down, but instead told the Judge Defendant Spickler had no objections. (Affidavit of Charles B. Rodway, Jr., Esq., and Affidavit of Defendant Spickler) (App.50, 47)
5. Mr. Athanus stated to Defendant Spickler that he was incompetent in his handling of the case. (Affidavit of Defendant Spickler, supported by Original Electronic Recording), (App. 47)

Whereas, because of these acts of negligence and omission on the part of Mr. Athanus, Defendant's attorney, he did not provide proper legal representation of Defendant Spickler in subject trial.

And, whereas these acts of negligence and omissions by Attorney Athanus are evidenced by the Transcript of the Trial, Depositions and Original Electronic Recordings,

Defendant-Appellant was effectively denied, by Attorney Athanus' incompetence, due process of law.

In People v. Corona , App. 145 Cal Reporter 894 (1978), the Court in effect ruled that failure of counsel to act competently in the behalf of his client results in denial of due process of law for his client.

In People v. Barton , App. 146 Cal Reporter 727 (1978) , failure of attorney to supply proper record was deemed violation of client's due process rights.

Wherefore, in preservation of his federal rights, Defendant-Appellant Spickler asserts his right under Amendment V of the Constitution of the United States of America wherein it is specifically stated:

> . . . [n]or (shall any person) be deprived of . . . property without due process of law

which right was abridged because of negligence and incompetence of Attorney Athanus leaving Defendant-Appellant Spickler without adequate representation in the judges's chambers before the trial.

This Law Court is respectfully requested to overrule the Order of Judge Glassman of January 19, 1976 and remand the matter to the court below for a new trial.

Signed at Scarborough, Maine, this 14th day of August, 1978.

Signed _____

Robert D. Spickler
Defendant-Appellant
pro se

In the ruling on the motion before the Superior Court in which the federal question was raised as to disqualification of Justice Glassman, the motion Justice's ruling makes no mention or reference to the federal question which was properly raised before him. (App. Pg. 19)

The Maine Supreme Court, in addressing that same federal question on appeal of that motion ruling, stated to the effect that they acknowledged that the United States Supreme Court in Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed. 2d. 712 (1975) is applicable to the question at hand but

> "[i]t would have to be shown that the trial Justice knew . . . that his wife was fired." (See Pet. App. Pg. 9)

Petitioner reminds This Court that Attorney Athanus and Spickler have affirmed that the trial Justice, when confronted with the statement that his wife works for Spickler as his attorney, stated, "She doesn't represent him any more," lends strong support to the assertion that the trial Justice did,

in fact, know that his wife was fired by Spickler.

Also, the testimony of Assistant Court Clerk Malia proves that the trial Justice knew a lot about Spickler and his (the Justice's) wife's law business. All of which proves that there is a greater probability that the trial Justice did know "[t]hat Spickler had discharged the Justice's wife from a case on which she might have earned a large fee," (App. Pg. 9); and, only if the Justice knew this "[c]ould there be a basis for contending that a probability of actual bias . . . on his part was generated which was too high to be constitutionally tolerable". (App, Pg. 9)

The affidavits, testimony of Mrs. Malia, and tapes offered in evidence, so impeach the trial Justice's statements, ("I have no knowledge of Mr. Spickler . . ." and " . . . I have . . . no knowledge of any of my wife's law practice," that were the Justice an ordinary witness in any court of law in the United States, having made these statements under oath, there would be complete disregard for his reliability as a witness.

With reference to raising the second federal question as to the incompetence of attorney in the brief and oral argument before the Maine Supreme Court on appeal; that Court, in its decision (App. Pg. 13) stated:

> "[n]othing asserted to us at the appellate level either in brief or oral argument asserted inadequate representation by counsel as an independent ground of relief under Rule 60(b)."

Petitioner is bewildered by this statement and refers This Court to the full copy of ARGUMENT II, i.e., THE COURT ERRED IN NOT RECOGNIZING THAT INCOMPETENCE OF ATTORNEY IS GROUNDS FOR A NEW TRIAL. (supra Pg. 11)

This statement further mystifies Petitioner inasmuch as at least half of time for oral argument on appeal before the Maine Supreme Court was spent belaboring the law in support of this argument! This includes an extensive colloquy between Justice Wernick and Spickler as to whether the precedent of People v. Corona and People v. Barton, (supra) extended to civil cases as well.

REASONS RELIED ON FOR GRANTING CERTIORARI

First Reason for Granting Certiorari:

THE STATE OF MAINE SUPREME JUDICIAL COURT, ON APPEAL, HAS DECIDED THIS CASE IN A WAY THAT IS NOT IN ACCORD WITH A PREVIOUS DECISION OF THIS COURT.

In Withrow V. Larkin, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L.Ed. 2d (1975), This Court ruled that

> "Cases in which the adjudicator has been the target of personal abuse or criticism from the party before him are situations where the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable under due process of law."

Petitioner placed before the Court below sufficient evidence of good weight to satisfy the Court below that Justice Glassman probably knew before the trial that Petitioner had fired his wife.

It follows - to fire the Judge's wife is to extrajudiciously abuse the Judge; thus fulfilling the conditions laid down in Withrow, supra, that "[t]he probability of actual bias . . . is too high to be constitutionally tolerable under due process of law".

The Maine Supreme Judicial Court, in its opinion dismisses Withrow as inapplicable because Spickler did not show,

> " . . . that the trial Justice knew of the circumstances on which Spickler relies . . . that Spickler had discharged the Justice's wife from a case on which she might have earned a large fee . . ."
>
> (App. Pg. 9)

Petitioner had presented enough evidence to the Court below to convince This Court that the probability that the trial Judge knew his wife had been fired was greater than the probability that the Judge didn't know she had been fired.

Second Reason for Granting Certiorari:

THERE IS A CONFLICT IN THE DECISIONS ON THE FEDERAL QUESTION OF DUE PROCESS BETWEEN THE MAINE SUPREME JUDICIAL COURT AND THE COURT OF APPEAL OF FLORIDA AS TO GROUNDS NECESSARY FOR GRANTING A NEW TRIAL BASED ON FACTS THAT SHOULD HAVE BROUGHT ABOUT SELF-DISQUALIFICATION OF THE JUDGE.

The State of Maine Supreme Court in Brengelmann, 393 A. 2d. 174 (1978) states the appeal based on disqualification of the trial Judge is denied because the motion Justice

> "[f]ailed to find objective evidence to support what is apparently Mr. Spickler's subjective belief that the 1976 trial was tainted by judicial bias and prejudice."
>
> (App. Pg. 7.)

The Honorable Justice Wernick stated in open court at time of oral argument that the State of Maine Supreme Court has always held with the precedent of Bond v. Bond, 127 Me. 117, 141 A. 833,835 (1928) which states:

> "At common law, the only ground for recusation of a judge was pecuniary

interest or relationship. Bias or prejudice was not sufficient.. . . The modern trend has been to add by legislation, other grounds of recusation to those recognized at common law. . . . And in a few cases the courts have held other grounds than those recognized at common law."

It is apparent that in using the precedent of Bond v. Bond , supra, the Maine Supreme Court could rule that even with the showing of bias and prejudice on the part of a lower Court Judge, Bond v. Bond does not mandate recusation. The modern "trend" referring to "other grounds" is very vague in not identifying what those other grounds may be. No examples are given.

Petitioner contends an issue as vital as denial of due process rights by not having a cold, disinterested and absolutely neutral judge cannot be guaranteed by the law governing recusation so loosely laid down by the fifty-year-old case of Bond v. Bond , supra, which leaves such extensive leeway for judicial discretion.

The conflict between the Courts of Florida and Maine comes into sharp focus when examining established Florida law on the subject of recusation. In Aetna Life and Casualty v. Thorn , Fla.App. 319 So. 2d 322 (1975), plaintiff suffered adverse final judgment. Plaintiff then discovered information after the trial that the trial judge was related to wife of counsel for the defendant.

Then with the newly discovered information, plaintiff filed motion to set aside final judgment entered. A circuit Court Judge for Dade County denied motion and plaintiff appealed.

The Florida District Court of Appeal held Circuit Court committed error in failing to act on the merits of the motion by stating:

" . . . judgment should be set aside when it appears after judgment that the trial Judge should not have tried the case because of an affinity of relationship. We hold that the judgment should be set aside where no substantial injustice will result by reason of the delay and it appears that the defect was made the basis of a motion as soon as discovered."

That Court also cited Anderson v. State , Fla. App. 287, So. 2d. 322 (1973):

"[t]he burden is upon the individual judge to determine his qualification to sit on a particular case.. . . A judge occupies such a particular position in the affairsof other men that not only must he be free of evil intent,but he must also avoid the appearance of evil."

The Florida Appeal Court, returning to Aetna, stated:

"The gist of a motion in the instant circumstance is not to determine the existence of bias but rather to determine whether the facts alleged in the motion are true. If the facts are found to be true then there is no doubt that a mistake was made by the trial judge: It follows that upon such terms as are just, the Court may upon proper motion relieve a party or his legal representative of a judgment. . . . The remedy sought here does not proceed from any conscious bias. It is a party's right to have a judge free from any obvious source of possible unconscious bias."

Petitioner restates the last line of the opinion in Aetna:

> "It is a party's right to have a judge free from any obvious source of possible unconscious bias."

This Court now has before it a conflict of decisions on a federal question existing between the highest Courts of two states on very closely related issues.

In considering this conflict, This Court is asked to take into consideration the following circumstances.

Maine has a very small population, barely one million people. There are only thirteen judges in the entire Superior Court system. These judges, although assigned primarily to one county, do substitute, intermingling in the court cases over all sixteen counties. By these inherent conditions the thirteen Superior Court judges probably know each other judicially and extra-judicially on a very closely-knit basis.

The Maine Supreme Judicial Court, the highest court in Maine, is made up of seven justices. Most of these Justices have been appointed from the Superior Court. Consequently, most of the Justices of the Maine Supreme Court are closely acquainted with the Justices of the Superior Court, undoubtedlyin many instances on a social basis because of the unavoidable characteristics indigenous to the court system in the State of Maine. It is probable that a quasi-fraternal relationship exists between and among the judges of both of our Courts.

The point is - can a fair analysis of an allegation against a fellow judge be made by the Maine Supreme Court, given the aforesaid conditions?

Petitioner does not imply that Maine judges

are evil adjudicators, conspiring to block valid claims of abuses against fellow judges, but the circumstances of the system here in Maine, absent stricter guidelines and a narrowing of the breadth of discretion that may be used in deciding when a judge should have stepped down is sorely needed in this state; and because of similar small populations and similar small staffs of judges in other states, it may be needed also in Alaska, Delaware, Nevada, New Hampshire, North Dakota, Rhode Island, Vermont and Wyoming, all states with populations of around one million or less.

A mandate from This Court clarifying how judges must be judged would be salutary and would preserve the public's respect for the system of judicial review by defining and standardizing the law for all state appellate courts when reviewing the performances of judges below.

Third Reason for Granting Certiorari:

A STATE COURT HAS DECIDED A SUBSTANTIAL AND UNSETTLED FEDERAL QUESTION ARISING UNDER THE CONSTITUTION.

The state of California, in People v. Corona, App. 145 Cal. Reporter 894, 80 Cal. App. 3d 684 (1978) and People v. Barton, 146 Cal. Reporter 727, (1978), 579 P. 2d. 1043 established that:

> "Failure of counsel to act competently in the behalf of his client results in denial of due process of law for his client."

Corona and Barton, supra, were introduced by Petitioner in the subject appeal to the Maine Supreme Judicial Court in Brengelmann, 393 A. 2d. 174. The Maine Supreme Court appears to have adopted, in general, the conclusion of the California Court by, not even in arguendo, countering the decision in its opinion. The Maine

Court concludes, instead, that Petitioner failed the prophylaxis of Corona by committing procedural error by not being more specific in raising the issue of counsel's incompetence as a "distinct and separate" issue. (See Petitioner's Argument that this conclusion was in error. Page 14 supra.)

This Court, in 1962, in Link v. Wabash Railroad Co., 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed. 2d 734, held that the dismissal of an action because of failure of an attorney to attend a pretrial conference did not abuse the discretion vested in the trial judge by F.R.Civ.P. 41 (b). This Court noted that such dismissal did not impose an unjust penalty on the attorney's client because a party who freely selects an attorney cannot avoid the consequences of the acts or omissions of that attorney. Link, supra, 370 U.S. at 633-34, 82 S. Ct. 1386, by citing Smith v. Ayer, 101 U.S. 320, 25 L.Ed. (1879).

However, in Link, This Court determined that dismissal was proper under Rule 41(b). In doing so, and while declaring that a party was deemed bound by its attorney's acts, the Court expressly indicated that the aggrieved party never availed himself of the "escape hatch" provided by Rule 60(b).

This Court, in Link, also refused to consider whether it would have been an abuse of discretion to deny a Rule 60(b) motion since such motion never was filed.

Petitioner reminds This Court that in the case at hand Petitioner did use the "escape hatch" of Rule 60(b) (6) which is the very motion denied, appealed and petitioned herein; and here is the opportunity for This Court to settle that question.

The federal question as to the constitutional significance of Corona and Barton, supra, can be settled by This Court so that the forty-nine state

courts other than that of California, may be able know conclusively how it affects their decisions.

Fourth Reason for Granting Certiorari:

(The Fourth Reason is perhaps the most important reason for granting certiorari in this case).

THIS COURT SHOULD GRANT CERTIORARI BECAUSE OF THE BIZARRE, GROSS AND EXCEPTIONAL CIRCUMSTANCES THAT CALL FOR THE EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

The extra-judicial relationship of Petitioner to the trial Judge, through the Judge's wife, reflected in the inconsistencies between the trial Judge's statements and the statements of others, should reveal to This Court an error so plain and so fundamental that this Petition, indeed, calls for an EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Not to grant review would shake public confidence in the fairness, integrity and reputation of our judges and courts. We (the public) need to be reassured that justice in the United States ultimately will prevail.

CONCLUSION

The evidence offered (by testimony, affidavits and the tapes) to the Courts below, including the Maine Supreme Judicial Court, establish much proof that the constitutional protection of the fifth and fourteen amendments were ignored by those Courts.

The bizarre story of Defendant, Judge and Judge's wife certainly establish the "EXCEPTIONAL CIRCUMSTANCES" that deserve intervention of This Court.

This Court should intervene, not only because of these "EXCEPTIONAL CIRCUMSTANCES", but perhaps, more importantly (at least from This

Court's point of view), there is a special need for clear parameters and guidelines to be promulgated by This Court so that all courts below, in reviewing circumstances requiring disqualification of a judge will have no doubt about the standard that must be followed.

The vital issue of being guaranteed a neutral, disinterested judge is at the very core of due process of law. It is too vital to be entrusted solely to the discretion and possible human whims of the lower courts.

For this and other reasons submitted herein, Petitioner prays again, that a writ of certiorari issue from This Court to review the Judgment and Opinion of the Maine Supreme Judicial Court of November 3rd, 1978.

Respectfully submitted,
Robert D. Spickler
50 Old Neck Road
Scarborough, Maine 04074
Petitioner, pro se

January 26, 1979

Me., 393 A. 2d. 174
George BRENGELMANN and
Gertraud Brengelmann
v.
LAND RESOURCES OF NEW ENGLAND AND
CANADA, INC. and
Robert D. Spickler
Supreme Judicial Court of Maine
Nov. 3, 1978

WERNICK, J.

Robert D. Spickler, the appellant here, as one of the defendants in a civil action brought in the Superior Court (Cumberland County) by the appellees herein, George and Gertraud Brengelmann, filed a counterclaim against the Brengelmanns as the plaintiffs in the action. After a trial, and in accordance with amendments made by an order dated September 2, 1977, judgment was entered for the Brengelmanns against the defendants, including defendant Spickler. The judgment also dismissed defendant Spickler's counterclaim.

Thus, all claims involved in the action having been adjudicated, the judgment was final within the contemplation of Rule 54(b). Defendant Spickler appealed from the final judgment. This Court denied his appeal in part, affirming the judgment entered in favor of the Brengelmanns, but sustained the appeal as to the dismissal of the counterclaim and ordered the counterclaim reinstated for further proceedings in the Superior Court. Brengelmann v. Land Resources of New England and Canada, Inc., et al, Me., 380 A. 2d 213 (1977).

Thereafter, Spickler filed a motion in the Superior Court pursuant to Rule 60(b)(6) M.R.Civ. P., seeking to be relieved from the judgment as

entered against him in favor of the Brengelmanns. Spickler contended that the Justice who presided at the trial was in fact biased and prejudiced against him or, alternatively, there were circumstances which per se, regardless of whether the trial Justice was actually biased or prejudiced, made it a violation of constitutional due process of law for the trial Justice to fail to disqualify himself.[1]

A Justice of the Supreme Judicial Court was assigned to sit in the Superior Court to hear and rule on the Rule 60(b) (6) motion filed by Spickler. After a hearing held at the beginning of February, 1978 this Justice, (hereafter the "motion Justice") on March 28, 1978, denied the motion, explaining his decision in a written opinion.

Now before us is Spickler's appeal from the denial of the Rule 60(b) (6) motion.

We deny the appeal.

1.

We confront a threshold issue as to the Superior Court's subject-matter jurisdiction of the Rule 60(b) (6) motion.

As an officer of the Court, counsel for the appellees felt constrained at oral argument to call to our attention that he perceived a problem, pursuant to requirements of Rule 54 (b), regarding

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1 Spickler had attempted to raise facets of these issues in his first appeal to this Court. He was foreclosed because he sought to establish his claims by adverting to material which could not properly be made part of the record of that appeal.

the "finality" of the judgment attacked by the Rule 60(b) (6) motion.[2] The premise of counsel's reasoning is that a judgment which is not "final" within the meaning of Rule 54(b) M.R.Civ.P., is not "final" within the meaning of Rule 60(b). Assuming this premise[3] without deciding as to it, we conclude that the judgment here under attack had achieved a special posture placing it beyond the scope of those provisions of Rule 54(b)[4] which cause a judgment to be "interlocutory" rather than "final".

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2 Rule 60(b) M.R.Civ.P. authorizes relief from "a final judgment, order, or proceeding. . . ." (emphasis supplied)

3 We have previously noted that we take our guidance in this area from the federal practice. Wormelle v. George, Me., 325 A. 2d. 4, 5 n.3 (1974). The federal courts apparently treat as indistinguishable the "final" judgment from which relief is available under Rule 60(b) and the "final" judgment Rule 54(b) authorizes the trial court to enter before the entry of judgment adjudicating all the claims presented by an action. See 6A Moore's Federal Practice ¶ 60.03 [4], 7 Moore's Federal Practice¶ 60.20. The theory appears to be that to relax the requirement of finality in the context of Rule 60(b) proceedings would set at naught the oft-reiterated principle that such proceedings are "not a substitute for appeal." See 11 Wright & Miller, Federal Practice and Procedure §2851, at 142 n.19 (citing representative cases).

4 Rule 54(b) reads:

> "When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim,

We have already noted that the Superior Court in the first instance had fully adjudicated both the complaint of the Brengelmanns and the counterclaim of defendant Spickler. Thus, in accordance with Rule 54(b) the judgment as then entered had achieved "finality", was therefore appealable, and was appealed and decided by this Court in Brengelmann v. Land Resources of New England and Canada, Inc., et al, supra.

That appellate disposition, by affirming the judgment in favor of the Brengelmanns against Spickler, so fundamentally severed the affirmed judgment from the counterclaim that even though the counterclaim was ordered reinstated as pending in the Superior Court, that fact could no longer, by virtue of Rule 54(b), change the affirmed

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or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

judgment's status from "final" to "interlocutory." Having once achieved finality in accordance with Rule 54(b), and having been affirmed, the judgment had become "final" in a further sense that it was ultimately definitive and therefore no longer subject to being affected by the Superior Court through any direct proceedings. This being so, the judgment had been placed beyond the reach of the provision in Rule 54(b) stating that "[i]n the absence of . . . [a] determination and direction . . ." by the presiding Justice in the Superior Court for "the entry of a final judgment as to one or more but fewer than all of the claims . . .", the consequence will be that

> "any order or other form of decision . . . which adjudicates less than all of the claims . . ."

is interlocutory in that it

> "shall not terminate the action as to any of the claims . . ., and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims . . .."

This conclusion is more readily apparent if we change the circumstances here in one respect: by having the original finality, and appealability, of the judgment at issue arise not because the Superior Court had adjudicated both the claims asserted by the complaint and the counterclaim but rather because the Superior Court had left the counterclaim pending but had made a determination and direction for the entry of a final judgment as to the claims asserted by the complaint. Just as in this latter situation the final judgment, once affirmed on appeal, would be beyond the further applicability of Rule 54(b) because it had achieved

ultimately definitive finality regardless of the pendency of the counterclaim, does not the same status of ultimately definitive finality attach to the judgment here at issue precisely for the same reason:-- that it had had an original finality to be appealable and was affirmed on appeal by the Court of last resort?

In the present circumstances, then, to assert that merely because the original finality, and appealability, of the judgment here at issue had been achieved in the absence of a determination and direction by the Superior Court for the entry of a final judgment, such determination and direction must now be supplied to avoid interlocutoriness under Rule 54(b)[5] would be to ignore substance and exalt form. The judgment having been placed beyond possibility of being affected by direct proceedings either in the Superior Court or on appeal, because it had already been final and appealable and affirmed in the appeal to the Court of last resort, the pending counterclaim is the only claim remaining open for direct appellate review. Were we, then, to start anew the Rule 54(b) cycle by treating the judgment now under consideration as other than a "final" judgment, we would not be serving the policy of avoiding piecemeal appellate review, and we would defeat other policies underlying the rule requiring finality of judgments: the prevention of unnecessary delay and conservation of judicial resources.

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5 At oral argument counsel urged that to overcome the jurisdictional infirmity to which he had alerted us, we should remand the case to the Superior Court for a nunc pro tunc determination and direction for the entry of final judgment.

The judgment here attacked by the Rule 60(b)(6) motion was a final judgment as contemplated by Rule 60(b), and therefore that prerequisite of subject-matter jurisdiction in the Superior Court was established.

2.

We turn to the merits of Spickler's claim for relief from the judgment entered against him.

as to the contention that the trial Justice was in fact biased and prejudiced against Spickler and manifested such bias and prejudice during the course of the trial, the motion Justice stated in his written opinion that he had reread the transcript of the trial

> "in an effort to discern overtly or 'reading between the lines' (as suggested by Mr. Spickler at the hearing) prejudice on the part of the Justice. His charge to the jury was again carefully considered as well as his ruling, which was favorable to Mr. Spickler, on the Plaintiffs' motion for counsel fees. . . . [T]his study of the trial transcript was done with increased sensitivity because of the allegations of bias and prejudice."

Thus scrutinizing the trial proceedings and also

> "giving due consideration to those evidentiary matters called to the attention of the Court at the hearing. . ."

on the Rule 60(b)(6) motion, the motion Justice failed to

> "find objective evidence to support what is apparently Mr. Spickler's subjective belief that the 1976 trial was tainted by

judicial bias and prejudice."

Our own careful scrutiny of the record confirms that far from being clearly erroneous (which is the standard by which we must review the motion Justice's decision to determine whether it should be overturned), the conclusion reached by the motion Justice was plainly correct.

Appellant Spickler claims a second ground for Rule 60(b) (6) relief: that even if there was no actual bias or prejudice on the part of the presiding Justice against him, circumstances were involved which per se required, as a prophylactic measure to ensure constitutional due process of law, that the trial Justice disqualify himself.

In his opinion the motion Justice describes these alleged circumstances as follows:

> "It is asserted that . . . the wife of the presiding Justice, who was and is an attorney, had been discharged by him, . . . [thus to be] deprived . . . of what might have been a substantial fee."

Appellant Spickler correctly argues that the Supreme Court of the United States has recognized that even where actual bias or prejudice on the part of a Judge is not, or cannot be, shown, in some kinds of circumstances a per se prophylactic rule of judicial disqualification is operative to guarantee constitutional due process of law. These are the patterns of circumstances as to which

> "experience teaches that the probability of actual bias . . . is too high to be constitutionally tolerable."

See Withrow v. Larkin, 421 U.S. 35,47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975).

We decide that in the present situation the

circumstances asserted by Spickler cannot bring into play a prophylactic rule for judicial disqualification. Plainly, before such rule could be applicable, it would have to be shown that the trial Justice knew of the circumstances on which Spickler relies; only if the Justice knew that Spickler had discharged the Justice's wife from a case on which she might have earned a large fee could there be a basis for contending that a "probability of actual bias . . ." on his part was generated which was "too high to be constitutionally tolerable." The evidence is utterly deficient to show knowledge by the trial Justice either of these particular circumstances indicating a hostility between Spickler and the wife of the Justice that could be deemed to carry over to the trial Justice and create a probability of actual bias on his part too high to be consistent with due process of law.

That the motion Justice so concluded is shown by the following colloquy:

> "THE COURT: . . . Mr. . . . [attorney for defendants Land Co. and Spickler] . . . has advised me that my wife represents Mr. Spickler in some pending litigation. Mr. Spickler indicated that she had never in any way had any association with this litigation.
>
> "MR. . . .: No.
>
> "THE COURT: Mr. . . ., [attorney for the Brengelmanns, the plaintiffs] do you have any objection to my continuing to serve as a presiding Justice in this case?

"MR. . . . : Your Honor, I have no objection to you continuing to serve in this case.

"THE COURT: Mr. . . ., do you or either of your clients have any objection to my continuing to serve on this case?

"MR. . . . : I'm going to ask Mr. Spickler this question. May I ask him this question?

"THE COURT: You certainly may. . . ."

What transpired thereafter is shown by the motion Justice's further finding:

> "The attorney who then represented Mr. Spickler was given an opportunity to consult with him on the question of judicial disqualification, and the Court was informed that 'he has no objection' to the continued participation of the Justice. The record discloses nothing coercive underlying this decision."

The evidence described above, and the motion Justice's interpretation of it, thus establishes that the trial Justice did not himself know, and was never told by Spickler or Spickler's attorney, about the circumstances now being relied on by appellant Spickler to invoke a constitutionally mandated prophylactic requirement for the trial Justice's disqualification. This being so, the foundation necessary to support Spickler's constitutional claim does not exist, and the claim fails.

In an effort to avoid this conclusion appellant Spickler, representing himself, sought at the oral argument of the appeal to undermine the finding of the motion Justice that "[t]he record discloses

nothing coercive underlying . . . [the] decision" of Spickler's attorney to inform the trial Justice that Spickler "'has no objection' to the continued participation of the [trial] Justice." Spickler argued that the motion Justice had denied him opportunity to place in evidence tape recordings in which, as Spickler represented to the motion Justice, Spickler's attorney had told him that he was "scared to death" of the trial Justice who is "a powerful man in the court system . . ." and, as a "young lawyer getting started. . .", the attorney would not "dare . . . cross him . . . ."

Arguendo, we assume as the strongest implications of this offer of proof that (1) Spickler had told his attorney to inform the trial Justice that Spickler had discharged the Justice's wife from a case on which she might have opportunity to earn a large fee and to press the Justice, in light of these circumstances, to disqualify himself and (2) Spickler's attorney, because he was afraid of incurring the trial Justice's wrath, made no mention of these matters to him but betrayed Spickler by stating that there was no objection to the Justice's continued participation in the case.[6] Even if accepted, these facts provide no support for the claim that the trial Justice's continued participation, in these circumstances, subjected Spickler

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6 Actually, the record utterly fails to support implying such facts. Spickler never asserted a claim before the motion Justice that his attorney had misrepresented Spickler's position to the trial Justice. On the contrary, it is plain in the record that Spickler agreed with the statement in his attorney's affidavit, which Spickler placed in evidence, that:

to so high a likelihood of an actually prejudiced tribunal as to be inconsistent with the constitutional guarantee of due process of law. All that these hypothesized facts would show is that it was inadequate representation by Spickler's attorney[7] which was responsible for the trial Justice's not knowing that Spickler had discharged the Justice's wife from a case on which she might have earned a large fee. The controlling point is that whatever the reason, the trial Justice lacked this critical knowledge. Without his having such knowledge, there was nothing to which, in the language of

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> "I [the attorney] did not discover until after the trial . . . that Mr. Spickler had allegedly discharged . . . [the wife of the trial Justice] as his attorney in another case immediately before the Brengelmann trial."

7 We need not decide whether it would be an independent ground for relief from a judgment under Rule 60(b) that the person against whom the judgment was rendered had been inadequately represented in critical respects by his attorney. By virtue of procedural default Spickler has lost the opportunity to raise that issue in a Rule 60(b) proceeding since he failed to raise it in the present proceeding. Although the memoranda, briefs, transcripts, and earlier briefs incorporated by reference in the motion mention inadequacy of representation, we find it plain that such allusions were made to show alleged instances of the trial Justice's actual bias and prejudice, and how these manifestations of bias and prejudice caused Spickler's trial to be unfair. No formal document before the motion Justice, no oral representations made in the course of the hearing on the Rule 60(b) (6) motion, and, of

Withrow v. Larkin, supra, "experience" could point to

> ". . . [teach] that the probability of actual bias . . . [on the part of the trial Justice was] too high to be constitutionally tolerable."

The motion Justice acted correctly in denying the Rule 60(b) (6) motion.

The entry is:

Appeal denied.

McKusick, C.J., and Archibald, J., did not sit.

Pomeroy, Delahanty, Godfrey and Nichols, JJ., concurring.

Attorney for Plaintiff: Verrill & Dana, by Charles A. Harvey, Jr. Esq.; Attorney for Defendant: Robert D. Spickler, pro se.

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particular importance, no portion of the letter written by Spickler in response to the motion Justice's request that Spickler give him a written explanation of exactly what he was claiming, and nothing asserted to us at the appellate level either in brief or oral argument asserted inadequate representation by counsel as an independent ground of relief under Rule 60(b).

AFFIDAVIT OF CHARLES B. RODWAY, JR.
(As Submitted in the Record to the Motion Justice)

The undersigned, Charles B. Rodway, Jr., having been duly sworn does depose and say as follows:

1. I, Charles B. Rodway, Jr., am an attorney admitted to practice before the courts of the State of Maine. All statements made herein are made on personal knowledge.

2. Sometime ago, I had a conversation with Robert D. Spickler in the Cumberland County Court House in Portland, Maine.

3. At the time, Mr. Spickler was seated in the hallway outside of Justice Harry P. Glassman's office.

4. Mr. Spickler stated to me that he was scheduled to appear as a defendant that day in a civil action trial before Justice Glassman.

5. He also stated that he had recently discharged Caroline Glassman as his attorney and he did not want Justice Glassman to conduct the scheduled trial.

6. I recommended that he make it known to his attorney so that his attorney could advise the judge of this.

7. He stated that he had informed his lawyer, who was in Justice Glassman's office at that moment, that he wanted Justice Glassman to disqualify himself.

8. Mr. Spickler stated that he was confident that Justice Glassman would not conduct the trial because of the conflict of Mrs. Glassman having been his (Spickler's) lawyer.

Dated at Portland, Maine this 30th day of September, 1977

(Sworn) (Signed)_____
Charles B. Rodway, jr.

AFFIDAVIT OF ERNEST L. BOWLEY
(As Submitted in the Record to the Motion Justice)

The undersigned, Ernest L. Bowley, having been duly sworn, deposes and says as follows:

1. I, Ernest L. Bowley, reside at Route One, Oakhill, Scarborough, Maine. All statements made herein are made on personal knowledge.

2. My occupation[is]foundation excavation contractor.

3. This has been my occupation since 1947.

4. On January 15, 1976, I sat as a prospective witness in the courtroom at Cumberland County Court House waiting to be called by the attorney for Robert D. Spickler in regard to my work in the Brengelmann foundation on Thomas Drive in Ocean View Harbor, Scarborough, Maine.

5. I would have testified as follows:

a) In the Spring of 1972 I dug the foundation with my equipment for all of the footings for the Brengelmann house.

b) My instructions were to excavate to a level of good subsoil material suitable for good bearing for the poured footing.

c) I followed those instructions and prepared the trenches so there was good bearing all around the house.

d) I have excavated hundreds of foundations in similar soil and there has been no trouble with failures in the foundation.

e) I have worked for Mr. Spickler on several different occasions and have found him to be a careful man in whatever he constructs, never cutting corners to save money at the expense of losing quality.

f) I know of nothing that Mr. Spickler could have done that he failed to do to insure a

successful foundation for the Brengelmann house.

Dated at Scarborough, Maine this third day of October, 1977.

(Sworn) (Signed)_____
Ernest L. Bowley

LETTER TO MOTION JUSTICE (from Record)
(from Petitioner) March 10, 1978

Dear Justice Archibald:

On February 6, 1978, at the Hearing in Cumberland County Superior Court, you instructed me to write you a letter with regard to the above motion setting forth a summary of the basis for my motion and what I am requesting from the Court.

Although it is my understanding that you asked for this resume in the form of a letter in the interest of brevity, I refer to the list of instruments docketed with the motion which is attached to this letter. When you thoroughly examine these documents I am confident that you will agree that I am entitled to a completely new trial in this case.

These documents intricately support my position in this letter. They are in appropriate evidentiary form of affidavits and/or original electronic recordings available to the Court.

The authorities cited are primary in weight and establish preponderantly the position taken by me that Judge Glassman should have immediately disqualified himself from the trial.

Thus far, the Law Court has decided that I was erroneously prevented from presenting my counterclaim to the jury. (CUM 77-23) At the same time, the Law Court upheld the judgment of $2,500 for the Plaintiffs. This decision, however, was decided for the Plaintiffs by the Law Court without

the benefit to the Appellant of consideration of ARGUMENT I, THE COURT BELOW ERRED WHEN JUSTICE GLASSMAN DID NOT DISQUALIFY HIMSELF AS TRIAL JUDGE. (Exhibit II) (This was struck by the Law Court in that it presented matters outside of the Record. (See Exhibit I).

Further, in upholding the Plaintiffs' award, the Law Court did not consider Appellant's Argument IA - THE COURT ACTED WITH BIAS AGAINST THE DEFENDANT. (Exhibit IV)

Also, the Court obviously did not consider the arguments set forth in Reply Brief of Appellant, (Exhibit III) which clearly support the allegations of ABUSE OF JUDICIAL DISCRETION on the part of the Court below.

Movant feels that if a complete new trial were not ordered by this Court, Defendant would be placed at an unfair disadvantage in not being allowed to have both disputes put to the same jury at one time so that one jury could hear all of the evidence and defenses for simultaneous consideration.

Movant, by the Motion before you, has framed two federal questions under the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution.

One, that the Court below had a personal conflict of interest with regard to me in that I had fired the judge's wife about fifteen days before the trial. This firing was from another lawsuit where the legal fees were expected to reach $20,000. There is ample reason to believe that Judge Glassman knew of this occurence. (Please, sir, review your file of entries and also recall the testimony of Mrs. Malia before your court). Mrs. Malia testified that Judge Glassman stated to her that he would not sit in matters concerning Spickler because "my wife acts as his attorney" - (this being before I fired his wife).

Then after I fired his wife, the judge stated, in the Record that he knows nothing about Spickler or his wife's law practice and insists on sitting at the trial!

Two, that the trial judge abused judicial discretion when he threw out the valid counterclaim which was ordered to be tried by a previous judge. (Please review Exhibit III)

Movant is not interested in seeking to bring discredit on Judge Glassman. Movant, instead, wants what the Constitution demands he be given: the right to not be deprived of property without due process of law.

The cases in precedent make it very clear that even where there is only a possibility of unconscious prejudice on the part of a judge, he must disqualify himself or his orders will be overturned by proper review.

Certainly, Movant's arguments have more than met the test of establishing that there certainly was a possibility of unconscious bias on the part of the trial judge.

In any event a careful review by you Justice Archibald, of the written instruments referred to herein should convince this Court that justice will only be served by granting me what I am entitled to but have not received; that is, a complete trial before a cold, neutral judge who has no bones to pick with any of the participants.

I thank you for this opportunity to be heard and anxiously await your further orders.

Respectfully yours,

(s) Robert D. Spickler

Robert D. Spickler

LIST OF DOCKETED ENTRIES

(RE: Ltr. to Justice Archibald - Mar. 10, 1978)

1. Motion for Relief from Judgment (Jan 3, 1978)
2. Argument in Support of Motion Feb. 6, 1978)

3. Affidavit of Robert D. Spickler in Support of Motion (Feb. 6, 1978
4. Affidavit of James A. Athanus, Esq. (Jan. 23, 1978)
5. Exhibit I - Decision and Order of Justice Pomeroy for Law Court (Nov. 10, 1977)
6. Exhibit II - Appellant's Argument I as originally submitted on Appeal but struck by Order of Law Court CUM 77-23 (Dec. 7, 1977)
7. Exhibit III - Reply Brief of Appellant Spickler, CUM 77-23 (Dec. 7, 1977)
8. Exhibit IV - Appellant's Argument IA, CUM 77-23
9. Movant's Exhibit "A", Ltr. of Withdrawl of Glassman & Potter dated 1-9-76 in another action.
10. Movant's Exhibit "B", Cancelled Checks to Glassman & Potter dated December, 1975.

[Petitioner's Note to This Court:
Keeping in mind that this Court urges brevity, (Rules of the Supreme Court 23 (4.)) and that several Justices of the Supreme Court have emphasized this in the past, Petitioner decided not to append ten documents referred to herein. However, it is important to state that documents 1, 2, 3, 4, 6 and 7 offer over and over again the tapes and/or the issue of incompetence of attorney to the motion Justice.]

STATE OF MAINE
SUPERIOR COURT, CUMBERLAND COUNTY
DOCKET No. 74-694
BRENGELMANN, et ux v. LAND RESOURCES et al
RULING ON MOTION

This is a "Motion for Relief from Judgment under Rule 60(b)(6)." executed and filed by Robert D. Spickler acting pro se. The motion sought re-

lief from a Plaintiffs' judgment against Mr. Spickler for $2,500.00 obtained in the Cumberland County Superior Court in Civil Docket No. 74-694. This result was sustained by the decision in Brengelmann, et ux v. Land Resources of New England & Canada, Inc. and Robert D. Spickler, Me., 380 A. 2d 213 (1977).

Our decision was filed December 12, 1977, and on the following January 3rd Mr. Spickler filed the motion now under consideration which was assigned to the undersigned Justice for hearing. This hearing was held in Portland on February 6, 1978, at which time Mr. Spickler appear pro se and Plaintiffs were represented by retained counsel. Acting pursuant to an order then made, the litigants have filed arguments of their respective positions which this Court has duly considered.

Cumberland Civil Docket No. 74-694 was tried before a jury on January 15, 1976, resulting in a verdict for $2,500.00. Because formal entry of judgment for the Plaintiffs on the Defendant's counterclaim was not recorded until September 2, 1977, the case was not in order for argument in the Law Court until its December Term, at which time it was both heard and decided.

This Court holds under the facts that the 60(b)(6) motion was "made within a reasonable time" even though the verdict was entered nearly two years prior thereto. The motion would not have been necessary if the Law Court appeal had resulted in favor of Mr. Spickler.

The underlying rationale in support of the 60(b)(6) motion is that the Superior Court Justice presiding when Cumberland Civil Docket No. 74-694 was tried acted with bias against Mr. Spickler and improperly failed to disqualify himself at the trial. It is asserted that because the wife of the presiding

Justice, who was and is an attorney, had represented Mr. Spickler previously and had been discharged by him, the Justice was necessarily prejudiced. It is urged that this is particularly so because Mr. Spickler's act in discharging this attorney deprived her of what might have been a substantial fee.

As incident to ruling on this motion, the trial transcript in Cumberland Civil Docket No. 74-694 has been reread in an effort to discern overtly or "reading between the lines" (as suggested by Mr. Spickler at the hearing) prejudice on the part of the Justice. His charge to the jury was again carefully considered as well as his ruling, which was favorable to Mr. Spickler on the Plaintiffs' motion for counsel fees. As had been indicated, this study of the trial transcript was done with increased sensitivity because of the allegations of bias and prejudice.

The question of the disqualification of the presiding Justice was openly discussed preliminarily to the taking of testimony in the 1976 trial, at which time all parties involved were aware of the Justice's wife's relationship with Mr. Spickler. The attorney who then represented Mr. Spickler was given an opportunity to consult with him on the question of judicial disqualification, and the Court was informed that "he has no objection" to the continued participation of the Justice. The record discloses nothing coercive underlying this decision.

In summary, and giving due consideration to those evidentiary matters called to the attention of the Court at the hearing on February 6, 1978, this Court cannot find objective evidence to support what is apparently Mr. Spickler's objective belief that the 1976 trial was tainted by judicial bias and prejudice. Therefore, the 60(b)(6) motion is denied.

Dated March 28, 1978.

(s) James P. Archibald
Justice, Supreme Judicial Court
sitting in the Superior Court
by assignment.